

**BEFORE THE STATE BOARD OF MEDIATION
STATE OF MISSOURI**

INTERNATIONAL ASSOCIATION OF)	
FIREFIGHTERS, LOCAL 2665,)	
)	
Petitioner,)	
)	
v.)	Public Case No. R 95-015
)	
CENTRAL COUNTY EMERGENCY 911,)	
)	
Respondent.)	

JURISDICTIONAL STATEMENT

The State Board of Mediation is authorized to hear and decide issues concerning appropriate bargaining units by virtue of Section 105.525, RSMo 1994. This case appears before the State Board of Mediation upon the filing by International Association of Firefighters, Local 2665 (hereinafter referred to as the Union) of a petition for certification as the exclusive bargaining representative for a unit of dispatchers and shift supervisors at Central County Emergency 911. A hearing in the matter was held on February 16, 1995 in St. Louis, Missouri, at which representatives of the Union and the Employer were present. The case was heard by State Board of Mediation Chairman Francis Brady, employer member Lois Vander Waerdt and employee member Joel Rosenblit. At the hearing the parties were given full opportunity to present evidence. Afterwards the parties filed briefs. After a careful review of the evidence, the Board sets forth the following Findings of Fact, Conclusions of Law and Direction of Election.

FINDINGS OF FACT

Central County Emergency No. 911 (hereinafter referred to as Central or the Employer) is established pursuant to Missouri law. It is a fire and emergency dispatching center which services portions of St. Louis County, Jefferson County and Franklin County. The fire districts/entities served by the Employer are Creve Coeur, Manchester, City of Town and Country, Metro West, Eureka, Pacific, Maryland Heights, Cedar Hill, Hillsboro and the Meramec Ambulance District.

The Employer receives emergency calls from citizens and routes those calls to the appropriate entity for response. This happens as follows. Upon receipt of an emergency call, the Employer's dispatchers get the relevant information from the caller and enter it into a computer system known as the CAD System. Working with information that is already entered in the computer, the dispatcher determines the appropriate emergency equipment to be sent to the emergency location. Another computer subsequently activates radios, lights and garage doors at the appropriate fire station and apprises that station of the emergency. The CAD System also informs the fire station of directions to the location of the emergency. The Employer's dispatchers also provide the emergency equipment dispatched to the emergency with any additional pertinent information.

Central has a six member board of directors which has overall authority over its operation. The board usually meets at the Employer's facility once a month. A subunit of the board is called the operating committee. The operating committee consists of the chief or administrator from each district/entity serviced by Central. Like the board of directors, the operating committee usually meets at the Employer's facility once a month. Directly underneath the board is the general manager. The general manager is the highest ranking employee in the Employer's organizational structure. The general manager reports directly to the board of directors. Below the general manager are four

shift supervisors. Underneath them are six dispatchers. There are no employees underneath the dispatchers in the Employer's organizational structure. Central's only other employee is an executive secretary who reports to the general manager. Thus, Central has a total of twelve employees: the general manager, the executive secretary, four shift supervisors and six dispatchers.

General Manager Michael Turner is in charge of the day-to-day operations at Central and its administrative functions. Turner is scheduled to work a 40 hour week but normally works 50 to 55 hours a week on Central business. About 80% of his time is spent at the Employer's facility (which is also called the Alarm Center).

The position of shift supervisor used to be called shift leader. One of the Employer's in-house documents, specifically the incident report form, still references them by that title (i.e. shift leader). The shift supervisors are the Employer's most senior employees. Traditionally, senior dispatchers have moved into the position of shift supervisor.

The shift supervisors and dispatchers work at the Alarm Center at computerized consoles. Dispatchers receive the incoming calls, enter information into a computer and dispatch the appropriate emergency equipment where needed. The shift supervisors ensure that they do so correctly. The shift supervisors also receive incoming calls and dispatch the appropriate equipment. Thus, both perform the same procedures as they work side-by-side. The shift supervisors spend about half of their work time doing dispatch work and performing the same duties as dispatchers. The shift supervisors and dispatchers try to work together as a team. The dispatchers and the shift supervisors dispatch in accordance with an extensive set of rules, policies and procedures. These rules, policies and procedures, which are contained in an operations manual, detail how the dispatchers and the shift supervisors are to respond to a myriad of matters.

The Employer operates continuously year round. In order to do so, the Employer uses a rotating four shift system. Under this system, in any one day there are always three shifts working and one shift off duty. The times of the shifts are 8:00 a.m. to 4:00 p.m.; 4:00 p.m. to 12:00 a.m.; and 12:00 a.m. to 8:00 a.m.. Each shift begins on days, then rotates to afternoons, then rotates to night and then is off for four to five days. Each shift is usually staffed by two workers: a shift supervisor and a dispatcher. When this happens, there is just one shift supervisor and one dispatcher on duty during the shift. Four of the dispatchers work one-on-one with a shift supervisor. The other two dispatchers rotate between the shifts and work during periods of heavy calls. They also fill in for dispatchers who are ill, on holidays or vacation.

The shift supervisors, as the title implies, are in charge of their shift and responsible for the activity that occurs therein. They monitor the dispatchers and their work and ensure they dispatch calls pursuant to the Employer's policy manual. They do this by sometimes listening to the dispatchers as they work. They also tell the dispatchers what duties to perform on the shift. In the event an emergency arises, they are in charge of same. They oversee the dispatchers even when Turner is present. In Turner's absence, the senior shift supervisor serves as acting general manager. The shift supervisors are the highest ranking employees present at Central on the evening and night shifts.

In the absence of a shift supervisor, a dispatcher becomes the acting shift supervisor. All dispatchers except probationary employees can be acting shift supervisors. When dispatchers serve as an acting shift supervisor, they receive additional pay for doing so.

The shift supervisors train new dispatchers on the proper use of the Employer's equipment and give them instructions on the Employer's policies and procedures. They

(the shift supervisors) also determine when training sessions are held during the shift and what topics are covered.

The shift supervisors approve or disapprove shift trade requests by the dispatchers. The dispatchers can trade shifts, but all trades have to be approved.

The shift supervisors receive calls from dispatchers who call in sick or are going to be absent. If a dispatcher does not call in or does not report to work, the shift supervisor finds out the reason for same. If a shift supervisor believes a dispatcher is excessively tardy or absent, they can ask the dispatcher to provide a medical documentation for their absence.

Shift supervisors handle the distribution of overtime. If a person calls in sick or is unable to report to work, a shift supervisor is responsible for finding a replacement so that the shift is adequately staffed. This almost always involves overtime for the replacement worker. The shift supervisors distribute overtime in accordance with an established policy. The policy is that overtime is spread throughout the shift supervisors and dispatchers on a combined seniority basis. Under this system, overtime is equalized.

The shift supervisors are responsible for creating the work schedule. This schedule is made up a year in advance so employees know when they are scheduled to work. In creating the work schedule the shift supervisors decide among themselves which shift supervisor will work with which dispatcher(s).

Shift supervisors are also responsible for performing tie-in communications between shifts. This involves briefing the incoming shift at a shift change on what transpired on the previous shift so that they are aware of same.

The shift supervisors are also responsible for maintaining a record known as the day book. The day book is used to keep track of closed streets, broken fire hydrants, alarm systems not in service, etc. Dispatchers sometime complete the day book.

The shift supervisors also fill out incident report forms and forms documenting on-the-job injuries.

In addition to performing the duties referenced above, the shift supervisors also perform certain ancillary duties on an individual basis. Joella Miller updates the street addresses in the Employer's CAD system so that the computer dispatches emergency equipment to the correct location. Miller also does public relations work for the Employer by giving 911 classes. Kim Suttles updates information in the computer for preplanned responses whereby the computer dispatches specific emergency equipment to each emergency based on the description of the emergency. Jill Dietrich updates information in the computer about businesses that are within the area serviced by the Employer. Dietrich also handles the emergency numbering system (ENS) which allows houses in rural areas to be identified by a number rather than an address. Lisa Hotsenpiller updates the Employer's Standard Operating Procedure (SOP) manual which mandates how calls are dispatched and what procedures are to be followed. Hotsenpiller also prepares monthly alarm reports. These reports are used by the Employer to monitor the number of calls received in a specific period of time and how fast equipment responded to those calls. Hotsenpiller has also attended outside meetings on behalf of the Employer. The shift supervisors sometimes assign these tasks to the dispatchers to perform.

The shift supervisors do not have the authority to hire employees; the responsibility for this task rests with Turner. The Employer's normal hiring process is as follows. Dispatcher applicants first take a written test. Next, the applicants are interviewed by an interview committee. There are three people on the interview committee: a fire chief from one of the districts/entities served by the Employer, a shift supervisor, and Turner. After the interviews are completed, the panel members decide on a candidate. The record does not indicate how the panel members reach their

decision concerning which candidate to recommend. Turner then takes the panel's recommended candidate to the Board for their approval, but this is a mere formality.

In the two most recent dispatcher hirings, the Employer did not utilize an interview committee. In one instance, a former dispatcher (Brian Clancy) indicated he wanted to return to Central. Shift supervisor Miller recommended to Turner that Clancy be rehired. He was, in fact, rehired. Turner also knew Clancy from his previous employment at Central. In the second instance, shift supervisors Miller and Suttles recommended that a dispatcher from another employer be hired. Miller and Suttles had previously worked with the individual they recommended, Tammy Evans. Evans was, in fact, hired. In both instances Turner made the decision to hire and the hirings were approved by the Board.

On at least one occasion the Employer used an interview committee to interview two dispatchers who were vying for promotion to shift supervisor. In that instance there were five people on the interview committee. One of the panel members was a shift supervisor. The interview panel made a recommendation to Turner who apparently did not serve on the panel. Turner accepted the panel's recommendation.

Shortly after the Employer filled the shift supervisor position just referenced, another shift supervisor position became available. This time though, the Employer did not utilize an interview committee to interview candidates and make a recommendation to Turner. Instead, Turner promoted the dispatcher who was not recommended by the interview committee in the previous promotion referenced above.

Dispatchers are evaluated on an annual basis. Usually these evaluations are done by the shift supervisors. On one occasion though, two dispatchers were directed to evaluate each other. The record does not contain any completed evaluations. Additionally, the record does not indicate what relationship these evaluations have on

the dispatchers moving through the (dispatcher) pay schedule. The completed evaluations are then reviewed by Turner, who can change them if he wants.

With regard to discipline, shift supervisors are empowered to issue verbal and written warnings to the dispatchers and have done so. The record contains six written warnings which shift supervisors have issued to dispatchers. The shift supervisors wrote these warnings themselves. Insofar as the record shows, all were issued without Turner's advance knowledge. Shift supervisors are not empowered to discharge employees; the responsibility for that task rests with Turner. On one occasion, a shift supervisor recommended to Turner that a dispatcher be discharged who had been caught sleeping on the job. The dispatcher was subsequently discharged, but the shift supervisor did not make the decision to do so--Turner did.

With regard to wages, dispatchers are paid according to the Employer's five step salary schedule. The lowest level (Grade V) is for probationary employees and the highest level (Grade I) is for those dispatchers with four or more years of service. Dispatchers progress through this schedule based on their years of service. The pay for these grades is as follows: Grade V -- \$11.25 per hour; Grade IV -- \$12.25 per hour; Grade III -- \$13.25 per hour; Grade II -- \$14.50 per hour; and Grade I -- \$15.25 per hour. Shift supervisors are paid \$17.00 per hour. With regard to benefits, shift supervisors and dispatchers receive the same fringe benefits.

CONCLUSIONS OF LAW

IAFF Local 2665 petitioned to be certified as the exclusive bargaining representative for a unit of dispatchers and shift supervisors at Central County Emergency 911.

An appropriate bargaining unit is defined by Section 105.500 (1) RSMo 1994 as:

A unit of employees at any plant or installation or in a craft or in a function of a public body which establishes a clear and identifiable community of interest among the employees concerned.

In this case there is no dispute per se concerning the appropriateness of a unit of dispatchers. The only question raised by the Employer with the composition of the proposed bargaining unit concerns the inclusion of the shift supervisors within that unit. As a practical matter though, the Employer's question concerning the appropriateness of including the shift supervisors in the bargaining unit is subsumed into their other question concerning their possible supervisory status. That being so, our determination herein concerning whether the shift supervisors are supervisors will be dispositive of whether they are included in the bargaining unit. With this caveat, we therefore hold that in the context of this case, a unit of dispatchers is an appropriate bargaining unit within the meaning of the Missouri Public Sector Labor Law.

As just noted, at issue here is whether the four shift supervisors should be included in that unit. The Employer contends they should be excluded from same on the grounds they are supervisors. The Union disputes that assertion.

Although supervisors are not specifically excluded from the coverage of the Missouri Public Sector Labor Law, case law from this Board and the courts have carved out such an exclusion. See Golden Valley Memorial Hospital v. Missouri State Board of Mediation, 559 S.W.2d (Mo.App. 1977) and St. Louis Fire Fighters Association, Local 73 v. City of St. Louis, Missouri, Case No. 76-013 (SBM 1976). This exclusion means that supervisors cannot be included in the same bargaining unit as the employees they supervise. Since a dispute exists here as to whether the shift supervisors "supervise" the dispatchers, it is necessary for us to determine if such is, in fact, the case.

This Board has traditionally used the following indicia to determine supervisory status:

- (1) The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees;
- (2) The authority to direct and assign the work force, including a

consideration of the amount of independent judgment and discretion exercised in such matters;

- (3) The number of employees supervised and the number of other persons exercising greater, similar or lesser authority over the same employees;
- (4) The level of pay, including an evaluation of whether the person is paid for his or her skills or for his or her supervision of employees;
- (5) Whether the person is primarily supervising an activity or primarily supervising employees; and
- (6) Whether the person is a working supervisor or whether he or she spends a substantial major

We will apply those factors here as well. Not all of the above factors need to be present for a position to be found supervisory. In each case the inquiry is whether these factors are present in sufficient combination and degree to warrant the conclusion that the position is supervisory.²

Before applying those factors here, we have decided to make the following preliminary comments.

First, the Board does not consider burden of proof concepts to be an appropriate guide to resolving the issues presented by a non-adversarial election petition. The Board's duty in election cases is to discharge its statutory obligation to determine the question of the appropriate unit for the purposes of bargaining. The burden of proof, to the extent one can be said to exist, was on each party to bring forth the information it deemed appropriate to guide the Board in its determination.

Second, although the position at issue (shift supervisor) contains the word "supervisor" in the job title itself, that is not controlling. We look at the duties the individual performs; not the job title.

¹ See, for example, City of Sikeston, Case No. R 87-012 (SBM 1987).

² See, for example, Monroe County Nursing Home District, d/b/a Monroe Manor, Case No. R 91-016 (SBM 1991).

Having said that, attention is now turned to the above-noted factors. After applying them to the shift supervisors at issue here, we conclude that on balance they do not meet this supervisory test. Our analysis follows.

Attention is focused initially on factor (1). It is undisputed that shift supervisors are not empowered to hire, fire, and promote employees on their own volition; the responsibility for those tasks rests with Turner. That said, the shift supervisors have a role in disciplining, evaluating and hiring. An analysis of their role follows.

With regard to discipline, shift supervisors have issued verbal and written warnings to dispatchers. The written warnings documented in the record were issued without Turner's advance knowledge. This means the shift supervisors do not have to get his approval to issue same. Additionally, in one instance a shift supervisor recommended that a dispatcher who had been caught sleeping on the job be fired. While that is what happened, it was Turner that made the decision to discharge the employee, not the shift supervisor.

With regard to evaluations, shift supervisors usually evaluate dispatchers on an annual basis. The record does not contain any completed evaluations though. As a result, we do not know what the evaluation entails or what is involved in completing same. Additionally, it is unknown how these evaluations affect the employee's movement through the steps of the dispatcher pay schedule. Given these unanswered questions concerning the evaluations involved here, we give little weight to the fact that the shift supervisors complete them.

With regard to hiring, it is noted at the outset that some shift supervisors have been invited by Turner to participate in the hiring process. Specifically, some shift supervisors have served on interview committees. These multiple member interview committees have interviewed candidates for hire and, in one instance, for promotion.

The shift supervisors who served on these committees presumably had some input concerning which candidate to recommend to Turner, but the record does not indicate what their level of input was. Additionally, several shift supervisors have recommended that specific individuals be hired as dispatchers. This happened in the last two hirings when the Employer did not utilize interview panels. In one instance a former employee was rehired. In the other instance a dispatcher from another employer was hired who had previously worked with two shift supervisors. While the foregoing evidence establishes that some shift supervisors have served on interview committees and some have made recommendations to Turner concerning who to hire, not all shift supervisors have done so. We therefore find that the shift supervisors, as a class, do not effectively recommend hiring decisions. In our view, the record indicates that Turner makes the ultimate hiring decisions. That being so, it is not necessary to the hiring process that the shift supervisors be involved in the interviewing of candidates or recommending who to hire.

The foregoing convinces us that while the shift supervisors definitely have a role in disciplining and evaluating employees and may be consulted in matters of hiring by the general manager, they certainly are not an indispensable party in the Employer's disciplinary and hiring decisions. Moreover, even if they make recommendations to the general manager concerning these matters, he (the general manager) is not obligated to follow their recommendations.

The focus now turns to factor (2), the authority to direct and assign the work force. There is no question that the shift supervisors are in charge of the dispatchers and assign them duties. The shift supervisors therefore direct and oversee the dispatchers on a day-to-day basis. In doing so, the shift supervisors monitor the dispatchers and their work and ensure they perform it in accordance with the Employer's

policy manual. They do this by sometimes "listening in" on the dispatchers as they receive the incoming calls. By in large though, the dispatchers know their job and do it without oversight and direction from the shift supervisors.

The shift supervisors ensure that the shift is adequately staffed. If a dispatcher calls in sick, the shift supervisor fills that vacancy by calling in someone else to work overtime to fill the vacancy. The shift supervisors distribute overtime pursuant to an established policy. Given the existence of this overtime policy, it follows that the assignment of overtime does not require independent judgment.

During a significant portion of each work week (namely the evening and night shifts), shift supervisors are the highest ranking personnel present at the facility. During that time they are officially in charge of the facility and responsible for handling whatever dispatch situations arise. If a matter arises that is not covered by the Employer's operations manual, they complete an incident report concerning the matter.

The foregoing persuades us that the shift supervisors are certainly called upon to exercise their discretion and make quick decisions in the performance of their duties. However, their decisions almost always involve dispatch matters--not personnel and labor relations. The latter are Turner's responsibility.

Next, with respect to factor (3), it is noteworthy that the number of dispatchers "supervised" on each shift is usually one and two at most. If the four shift supervisors were found to be supervisors over the six dispatchers, this would result in a ratio of one supervisor for every one and one-half dispatchers. In our view, that is inordinately high. With the shift supervisors in the bargaining unit though, there is still one supervisor (Turner) supervising 11 employees. Such a ratio is certainly not unheard of.

With respect to the level of pay (factor 4), it is noted that shift supervisors earn \$1.75 more per hour than the Grade I dispatchers. The five grades below the shift

supervisor pay rate are each separated by about a dollar an hour. In our opinion, the \$1.75 per hour difference between the Grade I dispatcher and the shift supervisor can justifiably be viewed as simply the next step in the dispatcher pay progression and pay for their additional duties and responsibilities.

Finally, with regard to factors (5) and (6), it is again noted that the shift supervisors are in charge of the dispatch center and oversee the dispatch work performed by the dispatchers. They direct the work of the dispatchers and ensure they dispatch calls in accordance with the Employer's policy manual. That said though, they also spend close to half of each work day performing dispatch work that is identical to that performed by the dispatchers they work with. Thus, the shift supervisors oftentimes work side-by-side with the dispatchers doing the same hands-on work they perform, namely dispatching. We therefore hold that while the shift supervisors oversee the dispatchers on a day-to-day basis, they are essentially lead workers.

Having applied the aforementioned criteria, attention is now turned to the Rock Township Ambulance District³ decision which the Employer cites to support their position here. In Rock Township, we found that the crew leaders at issue there functioned as supervisors. While many of the facts in that case are similar to those involved here, we believe there is one significant factual difference. In Rock Township, each crew chief oversaw five employees. Here, though, each shift supervisor oversees just one and one-half dispatchers. Given this significant difference in ratios, we believe that our holding in Rock Township is distinguishable from the instant one on that basis alone.

To summarize then, the record indicates that the shift supervisors at issue here are skilled employees who perform, incidentally to their work, a number of supervisory functions. Specifically, they are in charge of the facility on the second and third shifts,

³ Rock Township Ambulance District, Case No. R 89-015 (SBM 1989).

ensure proper staffing, monitor the dispatch work performed by the dispatchers to ensure proper performance, issue verbal and written warnings without prior approval, conduct performance evaluations, and may be consulted in matters of hiring. However, the factors just listed are not enough to make them supervisors. Overall, they do not possess sufficient supervisory authority in such combination and degree to make them supervisors. We therefore conclude they are not supervisors.

ORDER

It is the decision of the State Board of Mediation that the shift supervisors at issue here are not supervisory employees. They are therefore included in the bargaining unit with the dispatchers. The description of the bargaining unit found appropriate is as follows:

All dispatchers and shift supervisors employed by Central County Emergency 911, and excluding the general manager and the executive secretary.

An election is ordered therein.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Chairman of the State Board of Mediation, or its designated representative, among the employees in the aforementioned bargaining unit, as early as possible, but not later than forty-five days from the date below. The exact time and place will be set forth in the notice of election to be issued subsequently, subject to the Board's rules and regulations. The employees eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during the period because of vacation or illness. Those employees ineligible to vote are those who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election. Those eligible to vote shall vote whether or not they desire to have IAFF Local 2665 as their exclusive bargaining representative.

The Employer shall submit to the Chairman of the State Board of Mediation, as well as to the Union, within fourteen calendar days from the date of this decision, an alphabetical list of names and addresses of employees in the aforementioned bargaining unit who were employed during the payroll period immediately preceding the date of this decision.

Signed this 5th day of June, 1995.

STATE BOARD OF MEDIATION

(SEAL)

/s/ Francis R. Brady
Francis R. Brady, Chairman

/s/ Joel Rosenblit
Joel Rosenblit, Employee Member

/s/ Lois Vander Waerdt
Lois Vander Waerdt, Employer Member